privileged. *McGehee* v. *Ins. Co. of North America*, 112 Fed. 853. See ODGERS, SLANDER AND LIBEL, 5 ed., 242. And it might well be urged that the reason back of this privilege, *i. e.*, the freedom of a party to an action to make a defense, demands that the plea should not aggravate damages.

LIMITATION OF ACTION — NATURE AND CONSTRUCTION OF STATUTE — INABILITY TO DISCOVER BREACH OF WARRANTY PREVENTING RUNNING OF STATUTE. — A defendant pleaded a set-off based on a breach of warranty of goods sold. The breach was not discovered for a considerable time after delivery. The period prescribed by the Statute of Limitations had run since the delivery, but not since the discovery of the breach. *Held*, that the Statute runs only from the expiration of a reasonable length of time within which the defendant could have discovered the breach. *Sheehy Co.* v. *Eastern Importing & Mfg. Co.*, 43 Wash. L. R. 708 (D. C. App.).

When goods are sold under a warranty, the warranty is broken on delivery of inferior goods, and a right of action at once accrues to the buyer. *Vogel* v. *Osborne*, 34 Minn. 454, 26 N. W. 453. Ordinarily the Statute of Limitations begins to run simultaneously. But where the defect is revealed only after a lapse of time, an injured party may have his right of action barred before he is aware that he has such a right. Likewise, in warranties of title, the buyer may have to sue before being disturbed in possession in order to have his right of action, when his damages are purely speculative. These considerations have led some courts to adopt the view of the principal case. *Felt* v. *Reynolds Rotary, etc. Co.*, 52 Mich. 602, 18 N. W. 378; *Gross* v. *Kierski*, 41 Cal. 111. The weight of authority is, however, that the statutory period runs from the breach of the warranty. *Allen* v. *Todd*, 6 Lans. (N. Y.) 222; *Perkins* v. *Whelan*, 116 Mass. 542. See *Battley* v. *Faulkner*, 3 B. & Ald. 288. See 2 GREENLEAF, EVIDENCE, § 435. But where a defendant has fraudulently concealed the right of action the rule is usually lightened, although this result was not reached without some difficulty. *Gibbs* v. *Guild*, 9 Q. B. D. 59; *Sherwood* v. *Sutton*, 5 Mason (U. S.) 143. See 29 HARV. L. REV. 226. The basis of these cases is apparently an unwillingness to allow the defendant to profit by his own wrong. This would not, therefore, include the principal case, the result of which, though just, seems difficult to reach in view of the express wording of the Statute.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — COMMON-LAW ALTERNATIVE CLAUSE — EFFECT OF ABROGATION OF ASSUMPTION OF RISK. — An employee of the defendant railroad, who was hired for the purpose of repairing electrical apparatus, was killed by a shock sustained while at work on a defective insulator. The defendant, who was free from any fault in the accident, had not subscribed to the insurance clause of a Workmen's Compensation Act. By the Massachusetts Act (1911, Mass. Acts and Resolves, ch. 751, § 1), an employer who is not a subscriber loses the right to plead the "*defense*" of assumption of risk. The defendant is sued by the estate of the deceased. *Held*, that the plaintiff cannot recover. *Ashton* v. *Boston & M. R. Co.*, 109 N. E. 820 (Mass.).

There is a clear distinction between the assumption of the risks incident to the inherent dangers of a business and the assumption of those risks created by the evident negligence of the employer. *Rigsby* v. *Oil Well Supply Co.*, 115 Mo. App. 297, 91 S. W. 460. See Note, 28 L. R. A. N. S. 1215; Buford, "Federal Employers' Liability Act," 28 HARV. L. REV. 163, 177. For in its first sense assumption of risk is simply indicative of the fact that the status of master and servant has not put the master in the position of an insurer by creating a relational liability without fault. See *Duffey* v. *Consolidated Block Coal Co.*, 147 Ia. 225, 228, 124 N. W. 609, 610. But in its second meaning the phrase indicates an affirmative defense protecting the employer in spite of his

negligence. *Martin* v. *Des Moines Light Co.*, 131 Ia. 724, 106 N. W. 359. In this sense the doctrine has no application to the facts of the principal case. Clearly a literal interpretation of the language of the Act sustains the court in limiting the scope of the expression to this latter meaning. Such, however, must have also been the intention of the legislature. For an earlier New York Act had been called unconstitutional because it established a relational liability without fault. *Ives* v. *South Buffalo Ry. Co.*, 201 N. Y. 271, 94 N. E. 431. And it was to avoid this result that the Massachusetts legislature inserted this optional common-law remedy. See *Opinion of Justices*, 209 Mass. 607, 610, 96 N. E. 308, 315; RUBINOW, SOCIAL INSURANCE, 175. Therefore, to hold that the optional common-law remedy likewise established a relational liability without fault would be to defeat the very purpose of the legislature in providing the option.

MORTGAGES — PRIORITIES — PRIORITY OF SUBSEQUENT CREDITORS OVER BONDHOLDERS. — A receiver was appointed for the defendant railroad, and subsequently the bondholders brought suit to foreclose. The plaintiff intervenes, claiming priority to the bondholders for certain claims out of the proceeds of the foreclosure sale, on the ground that they arose from services which the plaintiff, as a connecting carrier, was legally bound to render to the defendant. *Held*, that these claims do not take priority over the lien of the bondholders. *Chicago, etc. R. Co.* v. *United States, etc. Trust Co.*, 225 Fed. 940 (C. C. A., 8th Circ.).

Current expenses of a railroad have a claim on gross earnings prior to that of the bondholders, on the ground that the creditors relied on such earnings rather than on general credit. *Virginia, etc. Coal Co.* v. *Central R. & B. Co.*, 170 U. S. 355. But only when the income has been diverted from the payment of current expenses to the improvement of the property may such claims be satisfied out of the *corpus*, in preference to the bondholders. *Burnham* v. *Bowen*, 111 U. S. 776; *Southern Ry. Co.* v. *Carnegie Steel Co.*, 76 Fed. 492. See 18 HARV. L. REV. 605. It has been stated that an exception exists where the preservation of the business requires immediate payment. *Miltenberger* v. *Logansport Ry. Co.*, 106 U. S. 286, 311; see dissent in *Gregg* v. *Metropolitan Trust Co.*, 197 U. S. 183, 190. Although the courts in the later cases recognize this exception, their refusal to apply it shows its narrow limits. *Thomas* v. *Western Car Co.*, 149 U. S. 95; *Gregg* v. *Metropolitan Trust Co.*, *supra*. See *Kneeland* v. *American Loan & Trust Co.*, 136 U. S. 89, 98; *Lackawanna Iron & Coal Co.* v. *Farmers' Loan & Trust Co.*, 176 U. S. 298, 316. The plaintiff's claim in the principal case, therefore, suggests a new exception, which the court seems correct in denying. The plaintiff, having entered the business of a carrier voluntarily, can scarcely complain of the relational burdens it has thereby assumed, nor make such complaint the basis of a claim for a preference. Indeed, a preference to a common carrier has been held the less justified, because immediate payment is not necessary to secure continued service. *Carbon Fuel Co.* v. *Chicago, etc. R. Co.*, 202 Fed. 172.

MUNICIPAL CORPORATIONS — OFFICERS AND AGENTS — LIABILITY OF HIGHWAY CONTRACTOR FOR MISFEASANCE. — The defendant, a contractor working on county roads, negligently piled stones on the road without proper safeguards. The plaintiff sues for injuries to himself and team resulting therefrom. *Held*, that he may not recover. *Ockerman* v. *Woodward*, 178 S. W. 1100 (Ky.)

For a discussion of this case, see NOTES, p. 323.

NEGLIGENCE — DEFENSES — ILLEGAL CONDUCT OF THE PLAINTIFF. — A statute requires public officers to impound all cattle running at large in highways. MASS. R. L., c. 33, §§ 22, 23. The plaintiff's bull escaped into the highway and was there killed by the defendant's negligently driven street car.